IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

MFA.No. 1038 of 1994()

OPMV.1045/1989 of ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD

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APPELLANT/PETITIONER:

SHANMUGHAN, S/O.ANKAPPA PULAVAR, AGED 60 YEARS,
PULAVAR HOUSE, PALAPPURAM POST, OTTAPALAM TALUK,
PALAKKAD DT.

BY ADV. SRI.O.P.NANDAKUMAR
SMT.T.THANKAM

RESPONDENTS/RESPONDENTS:

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1. A.K.ABDUL RASHEED S/O.KUNJU MOOSA, AGED 29 YEARS,
AMANATHU HOUSE, PANANGATTUKARA POST, WADAKKANCHERY.

2. THE UNITED INDIA INSURANCE COMPANY LIMITED, KUNNAMKULAM.

R2 BY ADV. SRI.SIBY MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1038 OF 1994

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Dated this the 13th day of December, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1045 of 1989 on the file of the Motor Accidents Claims Tribunal, Palakkad, is the appellant. Petitioner sustained injuries in a motor vehicle accident. He filed the O.P. after the period of limitation prescribed under the Motor Vehicles Act. There was a delay of 11 months 4 days in filing the Original Petition. Petitioner prayed that the delay may be condoned. Before passing orders regarding the delay, the matter was posted before the Lok Adalath and the matter was settled for an amount of Rs.25,000/-. But when the case was posted before the Tribunal with the orders of the Lok Adalat for passing of the award, the Tribunal took a view that it has no jurisdiction to entertain the O.P. which was filed beyond the period of limitation and dismissed the O.P.

2. The accident occurred on 28.3.1988. Petition was filed on 2.9.1989, after the commencement of the new Act. Section 166(3) of the Act, which was subsequently deleted with effect from 14.11.1994, provides that application for

compensation has to be filed within 12 months. In **Jankay v. Achuthan Nair** (1998(1) KLT 77), a Division Bench of this Court had taken a view that the benefit of the amending Act has to be extended to pending cases also where the plea of limitation has been raised. The same principle was followed in **Pradeep Kumar v. Kesavan Kutty Nair** (2000 (3) KLT 460) also. So the dismissal of the petition on the ground that the Tribunal has no jurisdiction to entertain the application which was filed after the period of limitation is illegal and liable to be set aside. It is also settled position of law that when a matter is settled before the Lok Adalat, the Tribunal is bound to pass orders in tune with the award passed by the Lok Adalat. So the appellant is entitled to get the compensation of Rs.25,000/- awarded by the Lok Adalat. The appeal was pending before this Court from 1994 onwards. I do not think it just and proper to saddle the Insurer with the liability to pay the interest for these period. Appellant can claim default interest only.

In the result, appeal is allowed in part. The award passed by the Tribunal is set aside. An award is passed in favour of

the appellant allowing him to recover a sum of Rs.25,000/- from the Insurer as compensation. The third respondent is directed to deposit the amount within two months from today. It is made clear that in case there is delay in making deposit of the amount as above, appellant is entitled to get interest at the rate of 9% from today till date of deposit. The appellant is allowed to withdraw the entire amount after deducting the court fee, if the same is not already paid.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1038 OF 1994

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J U D G M E N T

13TH DECEMBER, 2007